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accident being such as could not have been expected to happen, negligence was not shown.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. § 163; Dec. Dig. § 97.\*]

**3. Negligence (§ 58\*)—“Proximate Cause”—Elements.**—The requisites of “proximate cause” are the doing or omitting an act which a person of ordinary prudence could foresee might naturally or probably produce the injury, and that such act or omission did produce it.

[Ed. Note.—For other cases, see Negligence, Cent. Dig. §§ 71, 72; Dec. Dig. § 58.\*]

For other definitions, see Words and Phrases, vol. 6, pp. 5758-5769; vol. 8, p. 7771.]

**4. Master and Servant (§ 97\*)—Injury to Servant—Duty of Master.**—A master is required to anticipate and guard against consequences injurious to his servant, that may be reasonably expected to occur, but he is not compelled to foresee and provide against that which reasonable and prudent men would not expect to happen.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. § 163; Dec. Dig. § 97.\*]

LIFE INS. CO. OF VIRGINIA *v.* HAIRSTON.

Nov. 19, 1908.

[62 S. E. 1057.]

**1. Evidence (§ 472\*)—Opinion Evidence.**—In an action on a life policy, not in force until issued and the first premium paid during the good health of insured, testimony of the agent procuring the insurance that when a policy is delivered it is binding on insurer is, when preceded by testimony that insured paid part of the first premium in cash, and gave a note for the balance, which was paid some days after its maturity, the opinion of the agent on a point in issue.

[Ed. Note.—For other cases, see Evidence, Dec. Dig. § 472.\*]

**2. Appeal and Error (§ 1058\*)—Harmless Error—Error in Excluding Evidence Subsequently Received.**—Error in refusing to permit a party to propound questions to a witness is not prejudicial, when the questions are subsequently asked the witness and answered without objection.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 4195, 4200-4206; Dec. Dig. § 1058.\*]

**3. Insurance (§ 137\*)—Contract—Requisites—Payment of Premium.**—An insurer issuing a life policy may accept, in payment of the first premium, the liability of a third person; and, where insurer

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\*For other cases see same topic and section NUMBER in Dec. & Am. Digs. 1907 to date, & Reporter Indexes.

debts the premium to the agent, and looks to him ultimately for payment, then, as between insured and insurer, the premium is paid.

[Ed. Note.—For other cases, see Insurance, Cent. Dig. § 235; Dec. Dig. § 137.\*]

**4. Insurance (§ 141\*)—Contract—Requisites—Payment of Premium—Waiver.**—The stipulation in a life policy that it shall not be deemed complete until payment of the first premium in cash may be waived by an agent having power to execute and issue contracts for insurer.

[Ed. Note.—For other cases, see Insurance, Cent. Dig. §§ 256, 257; Dec. Dig. § 141.\*]

**5. Insurance (§ 141\*)—Contract—Requisites—Payment of Premium—Waiver.**—The stipulation in a life policy that it shall not be deemed complete until payment of the first premium in cash is waived by an absolute delivery of the policy, by an agent having power to execute and issue contracts for insurer under such circumstances as will justify an inference that credit is to be given.

[Ed. Note.—For other cases, see Insurance, Cent. Dig. § 260; Dec. Dig. § 141.\*]

**6. Insurance (§ 137\*)—Contract—Requisites—Payment of Premium.**—Where a special agent, bonded to make good to insurer all that might be due by him to it, solicited a policy of insurance, accepted the note of insured for the first premium, and became responsible to insurer for the amount thereof, and it was the practice of insurer to permit its agents to give credit for premiums, and to be themselves responsible for the payment thereof, the policy became effective on its delivery to insured, though it stipulated that it should not be deemed complete until payment of the first premium in cash.

[Ed. Note.—For other cases, see Insurance, Cent. Dig. §§ 241-243; Dec. Dig. § 137.\*]

**7. Evidence (§ 276\*)—Declarations by Decedent against Interest.**—In an action on a life policy, issued on an application reciting that insured, had never used opium, the evidence of a physician, seeing insured after the policy became complete, that insured was then under the influence of opium, and that insured then stated that he could take two or three bottles of laudanum a day, and had been taking that much for two or three years, was properly excluded; the interest of insured being so remote as not to be deemed of a pecuniary nature, and not being so direct as presumably to have been present in his mind at the time of his declaration.

[Ed. Note.—For other cases, see Evidence, Dec. Dig. § 276.\*]

**8. Evidence (§ 278\*)—Declarations against Interest.—Evidence of**

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\*For other cases see same topic and section NUMBER in Dec. & Am. Digs. 1907 to date, & Reporter Indexes.

declarations against the interest of the person making them, is not favored by the courts, and the tendency is rather to restrict than to enlarge the right to receive it, and the evidence is not admissible, unless the statements were made to the knowledge of the declarant against his obvious and real, pecuniary or proprietary, interest.

[Ed. Note.—For other cases, see Evidence, Dec. Dig. § 276.\*]

**9. Insurance (§ 654\*)—Life Insurance—Actions—Evidence—Admissibility.**—In an action on a life policy, not to become effective unless issued and the first premium paid during the good health of insured, evidence of the condition and habits of insured subsequent to the time the policy became effective is immaterial.

[Ed. Note.—For other cases, see Insurance, Cent. Dig. § 1681; Dec. Dig. § 654.\*]

**10. Evidence (§ 122\*)—Res Gestæ.**—In an action on a life policy stipulating for a reduced liability on insured committing suicide, a letter written by insured to his wife on the morning of the day of his death, occurring in the evening, is not a part of the *res gestæ*, and is inadmissible.

[Ed. Note.—For other cases, see Evidence, Dec. Dig. § 122.\*]

**11. Trial (§ 189\*)—Instructions—Hypothetical Statement of Facts.**—It is proper for the court to tell the jury what is the law as applied to a hypothetical statement of facts, provided the statement fairly presents the case shown in evidence.

[Ed. Note.—For other cases, see Trial, Cent. Dig. §§ 442-445; Dec. Dig. § 189.\*]

**12. Insurance (§ 669\*)—Action on Policy—Misleading Instructions.**—In an action on a life policy stipulating for a reduced liability in case insured committed suicide, an instruction that the fact that insured, on the evening of his death, was found in convulsions, which continued until he died, and that strychnine was discovered in his stomach was not alone sufficient to prove suicide was misleading.

[Ed. Note.—For other cases, see Insurance, Dec. Dig. § 669.\*]

**13. Trial (§ 200\*)—Instructions—Matters of Law.**—The court should content itself with giving the jury general principles of law, and leaving them to apply such principles to the evidence, or else it should, where it presents a hypothetical case, put before the jury all the facts bearing on the issue which the evidence tends to prove.

[Ed. Note.—For other cases, see Trial, Cent. Dig. § 471; Dec. Dig. § 200.\*]

**14. Trial (§ 235\*)—Instructions—Evidence.**—In an action on a life policy, stipulating for a reduced liability on insured committing suicide, an instruction that, if insurer seeks to avoid payment of the policy on the ground that insured committed suicide, it must show

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\*For other cases see same topic and section NUMBER in Dec. & Am. Digs. 1907 to date, & Reporter Indexes.

that every hypothesis of accidental death is excluded, accidental death being presumed by the law, which presumption cannot be overcome except by proof of facts excluding every hypothesis of death except by suicide, is correct, though it would have been better to have said that the evidence, to warrant a verdict for insurer, should exclude every reasonable hypothesis of accidental death.

[Ed. Note.—For other cases, see Trial, Dec. Dig. § 235.\*]

**15. Insurance (§ 669\*)—Life Insurance—Actions—Instructions.**—An instruction, in an action on a life policy, that no answer to any interrogatories made by an applicant for a policy should bar a recovery by reason of any warranty in the application, unless it is proved that such answers are willfully false or fraudulently made, etc., is in the language of the statute, and correct.

[Ed. Note.—For other cases, see Insurance, Dec. Dig. § 669.\*]

**16. Insurance (§ 669\*)—Life Insurance—Actions—Instructions.**—In an action on a life policy, stipulating that it should not be complete until payment of the first premium in cash, an instruction that, if insurer delivered the policy to its agent, who delivered it to insured, and if at no time thereafter and before the death of insured insurer gave notice that it wished to cancel the policy, insurer waived the condition of prepayment was misleading, as ignoring the fact that the agent who delivered the policy might have violated instructions limiting his authority, with the knowledge of insured.

[Ed. Note.—For other cases, see Insurance, Dec. Dig. § 669.\*]

**17. Insurance (§ 648\*)—Life Insurance—Actions—Burden of Proof.**—An insurance company, seeking to avoid the payment of a life policy on the ground that insured was guilty of material misrepresentations and fraud, has the burden of proving the misrepresentations and fraud, and the same will not be assumed on doubtful evidence or circumstances of mere suspicion.

[Ed. Note.—For other cases, see Insurance, Cent. Dig. § 1650; Dec. Dig. § 646.\*]

**18. Evidence (§ 60\*)—Presumptions—Presumptions in Favor of Honesty.**—The law never presumes fraud, but the presumption is in favor of innocence and honesty.

[Ed. Note.—For other cases, see Evidence, Cent. Dig. § 81; Dec. Dig. § 60.\*]

**19. Insurance (§ 665\*)—Life Insurance—Defenses—Suicide—Weight of Evidence.**—The defense of suicide, in an action on a life policy stipulating for a reduced liability on insured committing suicide, must be established by clear and satisfactory proof, and the preponderance of the evidence should be such as to overcome the presumption of innocence of moral turpitude.

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\*For other cases see same topic and section NUMBER in Dec. & Am. Digs. 1907 to date, & Reporter Indexes.

[Ed. Note.—For other cases, see Insurance, Cent. Dig. § 1720; Dec. Dig. § 665.\*]

**20. Insurance (§ 646\*)—Life Insurance—Defenses—Suicide—Burden of Proof.**—The burden of establishing the defense of suicide, in an action on a life policy, is on insurer.

[Ed. Note.—For other cases, see Insurance, Cent. Dig. § 1663; Dec. Dig. § 646.\*]

**21. Insurance (§ 669\*)—Life Insurance—Actions—Suicide—Instructions.**—In an action on a life policy, defended on the ground that insured committed suicide, an instruction that, in determining whether insured died from suicide or from natural or accidental causes, the jury must consider first what facts are established by preponderance of the evidence, and, having ascertained what facts are established, the jury must further consider whether there is any reasonable hypothesis consistent with death from natural or accidental causes, and if such facts are inconsistent with death from natural or accidental causes, they must find for insurer, properly submits the issue.

[Ed. Note.—For other cases, see Insurance, Dec. Dig. § 669.\*]

**22. Trial (§ 260\*)—Instructions—Requests—Instructions Covered by Those Given.**—It is not error to refuse a requested charge substantially covered by the charge given.

[Ed. Note.—For other cases, see Trial, Cent. Dig. §§ 651-659; Dec. Dig. § 260.\*]

**23. Insurance (§ 235\*)—Life Insurance—Suicide—Action—Instructions.**—In an action on a life policy, defended on the ground of suicide by insured, an instruction that, if the jury believe from the evidence, to the exclusion of every other hypothesis, that insured committed suicide, they must find for the insurer is open to the objection that the court erred in not stating to the jury that the evidence should exclude every reasonable hypothesis.

[Ed. Note.—For other cases, see Insurance, Dec. Dig. § 235.\*]

**24. Insurance (§ 669\*)—Life Insurance—Misrepresentations—Instructions.**—In an action on a life policy, an instruction that, if the jury believe that answers to questions in the report of the medical examiner were not true, and that the questions and answers were material, they must find for insurer correctly submitted the issue of misrepresentations in the application.

[Ed. Note.—For other cases, see Insurance, Dec. Dig. § 669.\*]

**25. Trial (§ 200\*)—Instructions—Form of Instructions—Requests.**—The court, in an action on a life policy, defended on the ground that insured committed suicide, may refuse a requested charge undertaking to state the case made by the record on the issue of suicide,

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\*For other cases see same topic and section NUMBER in Dec. & Am. Digs. 1907 to date, & Reporter Indexes.

and leave the jury to apply the evidence, with such aid as is afforded by giving general principles of law.

[Ed. Note.—For other cases, see Trial, Cent. Dig. § 471; Dec. Dig. § 200.\*]

**26. Trial (§ 252\*)—Instructions—Evidence—Applicability to Evidence.**—It is not error to refuse an instruction submitting an issue where there is no sufficient evidence to warrant it.

[Ed. Note.—For other cases, see Trial, Cent. Dig. §§ 596-612; Dec. Dig. § 252.\*]

**27. Trial (§ 253\*)—Instructions—Ignoring Evidence.**—It is not error to refuse an instruction which ignores part of the evidence.

[Ed. Note.—For other cases, see Trial, Cent. Dig. §§ 613-623; Dec. Dig. § 253.\*]

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ADAMS EXPRESS CO. *v.* CHARLOTTESVILLE WOOLEN MILLS.

Dec. 3, 1908

[63 S. E. 8.]

**1. Constitutional Law (§ 48\*)—Presumptions in Favor of Constitutionality.**—Every statute is presumed to be constitutional, and cannot be declared otherwise unless it is so clearly unconstitutional as to leave no doubt; and of two possible constructions that one will be adopted which will render it constitutional.

[Ed. Note.—For other cases, see Constitutional Law, Cent. Dig. § 46; Dec. Dig. § 48.\*]

**2. Commerce (§ 12\*)—State Law—Conflict with Federal Law.**—Interstate Commerce Act Feb. 4, 1887, c. 104, § 10, 24 Stat. 382, amended by act March 2, 1889, c. 382, § 2, 25 Stat. 857 (U. S. Comp. St. 1901, p. 3160), provides that "any person and any officer or agent of any corporation or company who shall deliver property for transportation to any common carrier, \* \* \* and shall knowingly and willfully, by false billing, false representation of the contents of the package, or false report or weight, \* \* \* obtain transportation for such property at less than the regular rates then established, \* \* \* shall be deemed guilty of fraud, \* \* \* and shall, upon conviction, \* \* \* be subject for each offense to a fine. \* \* \* " Va. Code 1904, § 1294c, cl. 10, is practically identical with the above, except that the punishment prescribed by it is less severe than that imposed by the federal statute. Held, that the state law is not unconstitutional, as in conflict with the provisions of the federal law.

[Ed. Note.—For other cases, see Commerce, Cent. Dig. § 7; Dec. Dig. § 12.\*]

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\*For other cases see same topic and section NUMBER in Dec. & Am. Digs. 1907 to date, & Reporter Indexes.